

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

## LOUISIANA MUNICIPAL POLICE EMPLOYEES RETIREMENT SYSTEM,

2:12-CV-509 JCM (GWF)

Plaintiff,

V.

STEPHEN A. WYNN, et al.,

## Defendants.

## ORDER

17 Presently before the court is defendants Stephen A. Wynn, Linda Chen, Russell Goldsmith,  
18 Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, D. Boone  
19 Wayson, and Allan Zeman's motion to dismiss. (Doc. # 99, 103). Defendant Elaine P. Wynn and  
20 nominal defendant Wynn Resorts Limited joined the motion to dismiss. (Doc. # 102, 104).<sup>1</sup> Plaintiffs  
21 Louisiana Municipal Police Employees' Retirement System *et al.* failed to file an opposition.<sup>2</sup>

22 "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted  
23 as true, to 'state a claim for relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 129 S. Ct. 1937,  
24 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "Where a

<sup>26</sup> Plaintiff Louisiana Municipal Police Employees' Retirement System voluntarily dismissed defendant Kazuo Okada (doc. # 107), leaving no other defendants than those party to the motion to dismiss.  
<sup>27</sup>

<sup>2</sup>Plaintiffs' response was due October 1, 2012.

1 complaint pleads facts that are ‘merely consistent’ with a defendant’s liability, it ‘stops short of the  
 2 line between possibility and plausibility of entitlement to relief.’” *Id.* (citing *Bell Atlantic*, 550 U.S.  
 3 at 557). However, where there are well pled factual allegations, the court should assume their  
 4 veracity and determine if they give rise to relief. *Id.* at 1950.

5 Further, in shareholder suits, Fed. R. Civ. P. 23.1 requires shareholders to plead with  
 6 particularity the reasons for not making a demand for corrective action on the board of directors. Fed.  
 7 R. Civ. P. 23.1 (that is, “the reasons for not obtaining the action or not making the effort.”). Rule  
 8 23.1 “imposes heightened pleading imperatives in shareholder derivative suits.” *See Shoen v. SAC*  
 9 *Holding Corp.*, 137 P.3d 1171, 1179 (2006) (discussing Nevada’s counterpart to this procedural  
 10 rule).

11 Pursuant to Local Rule 7-2(d), an opposing party’s failure to file a timely response to any  
 12 motion constitutes the party’s consent to the granting of the motion and is proper grounds for  
 13 dismissal. *U.S. v. Warren*, 601 F.2d 471, 474 (9th Cir. 1979). However, prior to dismissal, the  
 14 district court is required to weigh several factors: “(1) the public’s interest in expeditious resolution  
 15 of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants;  
 16 (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less  
 17 drastic sanctions.” *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (citing *Henderson v. Duncan*,  
 18 779 F.2d 1421, 1423 (9th Cir. 1986)).

19 In light of the plaintiffs’ failure to respond and weighing the factors identified in *Ghazali*,  
 20 the court finds dismissal appropriate.

21 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendants’ motion to  
 22 dismiss (doc. # 99, 103) be, and the same hereby is, GRANTED. The case is hereby dismissed as  
 23 to all defendants without prejudice.

24 DATED October 9, 2012.

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 26   
 27 **UNITED STATES DISTRICT JUDGE**  
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